Danielle Staltari
Director
Adjudication Branch
Australian Competition & Consumer Commission (ACCC)

By email only: adjudication@accc.gov.au

23 October 2020

Dear Ms Staltari

Re: Queensland Dairyfarmers' Organisation Limited (QDO) – Application for Authorisation AA1000530

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Lion Dairy & Drinks appreciates the opportunity to make a submission on the Queensland Dairy Organisation (**QDO's**) proposed 'Fair Go Dairy' licencing scheme.

Lion Dairy & Drinks is a leading Australian food and beverage company that forms part of the broader Lion group owned by Kirin Holdings. Lion Dairy & Drinks has a portfolio that includes many of our region's favourite brands, including Dairy Farmers, Pura, Dare, Farmers Union, Yoplait, Daily Juice, The Juice Brothers and Berri.

The core activities of Lion Dairy & Drinks in Australia are the manufacture, marketing, sale and distribution of white milk, flavoured milks, fresh dairy foods, and fruit juices. Our Australian dairy and juice manufacturing footprint span 11 sites including milk, yoghurt and juice facilities. We employ around 2300 people across Australia with some of the team also based in Singapore, Malaysia and China.

Lion Dairy & Drinks, formerly known as National Foods, has dairy origins stretching back to the formation of the Dairy Farmers Milk Cooperative in 1900. Lion Dairy & Drinks also partners with around 280 dairy farms in Australia and procures about 840 million litres of milk each year. We contract dairy farmers direct and following the National Foods acquisition of the former Dairy Farmers business, we also source milk via the Dairy Farmers Milk Co-operative (**DFMC**), who in turn have milk supply contracts with farmers primarily in Queensland and New South Wales.

We directly employ approximately 170 people in Queensland and are an integral component of the state's agricultural and retail industries. In Queensland, we operate two dairy manufacturing sites - one in Crestmead in south-east Queensland and one in Malanda in far-north Queensland, and we have one of the largest chilled distribution networks nationally. We partner with 74 dairy farms in the state either directly or through the DFMC – 33 of these dairy farms are in South East Queensland 41 are in Far North Queensland.

Our approach to milk procurement is based on offering farmers what we call the "3Ps" – competitive pricing and contract terms, partnerships and a clear purpose and strategy about growing profitable demand for dairy and ensuring sustainable returns through the supply chain.

For the reasons set out below, Lion Dairy & Drinks does not support the authorisation of this scheme.

Method for how QDO proposes the SFFP will be calculated

We have real concerns with the fairness of the mechanic that is being used to set the 'sustainable and 'fair go' farmgate price' (**SFFP**).

The SFFP is determined by QDO using a formula for the Cost of Production (**COP**) multiplied by the CPI Adjustment Rate. The Cost of Production means the average cost of production for milk published by the Queensland Dairy Accounting Scheme (**QDAS**). We have several concerns with the use of this data.

Firstly, the calculation of SFFP is not reflective of current cost of production. There is a 12 month delay, as QDAS data is released at the end of a financial year. This data is then used to set the following financial year's SFFP. For example, the starting SFFP of 71.1cpl is pegged to the price of milk production in Queensland in F19, a year of severe drought conditions, where the average feed costs according to QDAS data jumped 5cpl compared to the previous year. In our view it is inappropriate to be setting the opening SFFP based on F19 data where the feed costs were particularly high.

Secondly, the SFFP does not incentivise improvements in efficiency on farm. The flow-on effect is that the rest of the supply chain, and potentially consumers may ultimately wear the cost of maintaining inefficient farming practices. The QDAS data shows that some farms in Queensland are operating more efficiently than others, with higher returns. In our view, it is therefore clear that there is room for many farms to improve in lowering their cost of production.

Thirdly, the QDAS data is open to manipulation now that it is being used as a means for determining the SFFP. The data can easily be skewed by the inclusion of more inefficient farms or less efficient farms in the data pool, or for example, if "imputed labour costs" are overstated. These are just a few ways in which the overall COP can be manipulated and skewed with significant impact on the resulting average cost of production. Farmer data is also not audited so this is not a transparent process.

Lastly, we would argue that principal payments should not be included at all in the calculation of COP (as they are in the QDAS data).

This all leads to an SFFP that is, in our view, artificially high and open to manipulation. It does not represent a sustainable and fair farmgate price for processors and farmers in F20/21 and beyond.

We are concerned that consumers may be misled that brands that do not carry the Fair Go Dairy Logo, by implication, do not pay farmers a sustainable and 'fair go' price. In our view, this is false because the SFFP is set artificially high.

If the 'Fair Go Dairy' scheme is given authorisation by the ACCC, we also believe that this will have a negative impact on the relationship processors such as ourselves have with dairy farmers in Queensland as it sets an unrealistic expectation in the market for a 'fair' price that processors should be paying farmers in Queensland. In reality, for the reasons outlined in this submission, this is not a sustainable price that processors can afford to pay farmers.

Ability for processors to pass on increases in farmgate price to retailers, retailer own brand 'pass-through' payments and the impact on competition

In our experience, it is highly unlikely that if Lion Dairy & Drinks were to pay farmers at or above the SFFP, it would be able to pass on this price increase to retailers. This would mean if Lion Dairy & Drinks chose to increase its farmgate milk prices to at or above the SFFP it would unfairly bear all the cost impact of this price increase.

It is also unclear from the QDO's submission whether the 'pass-through' payments that are made by retailers (in relation to their private label milks) to processors of the private label milks to 'pass-through' to farmers are included in the calculation of whether that processor pays their farmers at or above the SFFP. If retailer own brand 'pass through' payments are included, this unfairly favours processors who make retailer own brand products, and disadvantages processors that manufacture branded milks in Queensland.

There is also a significant harm to competition that may result between processors of branded milk and retailers who sell private label milk. There is a possibility that one or more of the retailers may increase the price they pay to farmers to at or above the SFFP to take advantage of the licencing scheme because they are able to absorb these higher farmgate costs into other parts of their business. This would place Lion Dairy & Drinks and other processors at a significant disadvantage as it would not be able to pay farmers at or above the SFFP and pass on these price increases to the retailers and would not be able to absorb these costs over time.

What is a sustainable farmgate price and the likely detriment of the scheme on the Queensland Dairy Industry

We disagree that the SFFP represents a 'sustainable' price for the Queensland dairy industry.

Sustainability is not just about paying farmers a high price. It is about fostering a long-term future for the dairy industry in Queensland. This requires fostering sustainability from end to end in the supply chain in Queensland and encouraging efficient farming practices to ensure farms can be sustainable now and in the future.

At the moment, the average cost of farmgate milk in Queensland is already significantly higher than in other states. It is already cheaper for some processors to freight milk from other states, than to purchase milk from local farms in Queensland.

A sustainable dairy industry in Queensland therefore requires investment in a different way of farming and promoting greater efficiency in farming methodology. Increasing the price of farmgate milk in Queensland to the SFFP, simply increases the divide between the price of farmgate milk in Queensland and the rest of the country. This has a significant detriment to the Queensland dairy industry.

The SFFP does not encourage farmers to make investments to increase efficiency. Rather, it encourages farmers to continue to maintain their high operating costs. Queensland farmers have high operating costs compared to the rest of Australia, and some of those costs are within their control to reduce through a combination of farm size, farm management practices and technology.

Lion Dairy & Drinks currently purchases 80 million litres of milk annually from over 70 farms in Queensland either directly or through the Dairy Farmers Milk Co-operative. However, if the ‘Fair Go Dairy’ scheme has the effect of pushing up farmgate milk prices, then Lion Dairy & Drinks and other large processors may have no other option but to cease purchasing milk from Queensland farms and ship milk in from other states.

This is overall a negative outcome for the sustainability of the Queensland dairy industry and therefore a public detriment as it may lead to processors having no other options but to source milk from cheaper markets (such as Victoria) and freight this milk up.

Whether the ‘FAIR GO DAIRY’ will assist consumers

We are concerned that this logo will be interpreted by consumers to mean that brands that do not carry this logo are not treating their farmers fairly, i.e., not giving farmers a ‘fair go’.

In addition to the concerns we have expressed above regarding whether the SFFP is in fact a ‘sustainable’ price, we are also concerned that this scheme fails to take into account other factors.

In our view giving farmers ‘a fair go’ is more than the price that is paid for milk. There are additional values that we bring to our partnership with farmers that are not taken into account with this scheme.

At Lion Dairy & Drinks we are committed to creating strong partnerships with our dairy farm suppliers. In 2016, we launched our farm sustainability program called Lion Dairy Pride, which offers our farmers a unique way to measure, evaluate and improve key areas of sustainability on their farm. The program includes a website and an easy to use online self-assessment tool, which looks at all areas of a dairy business including quality, animal welfare, environment management, farm safety, labour management, and effective business management. We also offer the Lion Dairy Pride By-Products program, which takes the by-product of beer production at Lion’s brewery’s in brewers’ grain and we offer this for sale as stock feed for our dairy farmers across the country including in Queensland. Brewers’ grain offers high quality nutrition for dairy cows and benefits for farmers. As part of a balanced diet, brewers’ grain can help to increase milk output, enhance fat and protein composition, improve farm productivity and drive down the cost of production.

At Lion Dairy & Drinks the wellbeing of all our dairy farm partners is paramount and our Lion Dairy Pride Farmer Support Program is available to all our farmers, their families and employees. The program offers 24/7 free confidential counselling.

Another critical factor that should be taken into account, is whether processors are complying with the Dairy Code and ensuring they have written contracts in place.

Our view is that this logo would arguably undermine the purpose of the Dairy Code which was to create a fair and even playing field between farmers and processors and address some of the perceived imbalances in bargaining power. If some processors are not able to, or choose, not to participate in this process it could convey to consumers that these same processors are somehow not otherwise complying with their legal obligations, or that there was perhaps a regulated milk price in QLD, when this is not the case. We are also concerned about the overall impression created to consumers at the point of purchase. The front of pack logo would not readily communicate the technical details that sit behind this logo.

Further, the point in time COP analysis of the SFFP disregards long standing partnerships that processors such as Lion Dairy & Drinks have had in Queensland with Queensland farmers and the Dairy Farmers Milk Co-operative to support the longevity and sustainability of the Queensland dairy industry.

In our view there is a real risk of the SFFP distorting the perception of what a ‘fair’ price is to pay for milk in Queensland, and if this price becomes too high, processors will have no other option but to look elsewhere to purchase their milk. This has a significant public detriment to the Queensland dairy industry as a whole.

Finally, this scheme is Queensland-centric requiring 80% of the milk to come from farms located in Queensland from cows located in Queensland. This significant condition is not conveyed in the logo and therefore raises a number of risks with respect to how the logo is likely to be misunderstood by consumers.

For example:

- dairy products (like yoghurt) that are manufactured interstate irrespective of what the processor pays their farmers, will not be eligible to use the ‘Fair Go Dairy’ logo; and
- dairy products that do use milk from Queensland and do pay their farmers at or above the SFFP but also use more than 20% milk from interstate, will not be eligible to use the ‘Fair Go Dairy’ logo.

Potential conflict of interest in administration of the scheme

This scheme is being administered by the QDO, and as such there is the potential for conflicts of interest to arise in the way the SFFP is set and in the administration of the ‘Fair Go Dairy’ scheme. We would expect a significant degree of transparency and third party auditing of the scheme. We would also expect that the entire supply chain should be taken into account when determining what is ‘sustainable’, for farmers and processors However, we are concerned that there is the risk of manipulation of QDAS data, in particular, since farmer data is not audited and the average COP can easily be skewed to be higher than actual average COP by the overrepresentation in the QDAS data pool of inefficient farms. There are also no mechanisms to encourage farmers to improve how efficient their farms are, or to reduce their costs of production.

10-year term

We oppose this authorisation of this scheme for the reasons set out above. However, if an authorisation was granted, we would recommend that this be for a short and measured period (no longer than two to three years) after which point the potential detriment or benefits of this scheme could be reviewed. In particular, this should be reviewed in light of the potential impacts to other states and the broader dairy industry.

Yours faithfully

Thisuni Ranasinghe
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Lion Dairy & Drinks